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* Application for admission pro hac vice pending

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

A.D. and C. by CAROL COGHLAN
CARTER, their next friend; S.H. and J.H., a
married couple; M.C. and K.C., a married
couple; for themselves and on behalf of a
class of similarly-situated individuals,

Plaintiffs,

v.

KEVIN WASHBURN, in his official
capacity as Assistant Secretary of
BUREAU OF INDIAN AFFAIRS; SALLY
JEWELL, in her official capacity as
Secretary of Interior, U.S. DEPARTMENT
OF THE INTERIOR; GREGORY A.
McKAY, in his official capacity as Director
of the ARIZONA DEPARTMENT OF
CHILD SAFETY,

Defendants.

Case No. 2:15-CV-01259- PHX-NVW

**MOTION OF NATIONAL
CONGRESS OF AMERICAN
INDIANS, ASSOCIATION ON
AMERICAN INDIAN AFFAIRS,
AND NATIONAL INDIAN CHILD
WELFARE ASSOCIATION FOR
LEAVE TO FILE BRIEF AS AMICI
CURIAE**

Pursuant to Rule 7.2 of the Local Rules of the District of Arizona and Rule 7 of the Federal Rules of Civil Procedure, the National Congress of American Indians, the Association on American Indian Affairs, and the National Indian Child Welfare Association, respectfully move for leave to file the attached brief as amici curiae in the above-captioned case in support of federal, state, and tribal-intervenor Defendants (collectively the “Defendants”) motions to dismiss (Docs. 41, 44, and 47). Counsel for amici have contacted all parties and prospective Intervenor-Defendant for their respective positions on this motion; Plaintiffs and prospective Intervenor-Defendant consent to the motion; Defendants Kevin Washburn and Sally Jewell have no objection to the motion; and Defendant Gregory A. McKay takes no position on the motion.

MEMORANDUM OF POINTS AND AUTHORITIES

The Indian Child Welfare Act and the protections that it provides for tribes and Indian families are of significant importance to amici and their members. As explained in the brief lodged with this motion, Plaintiffs’ challenges threaten to undermine both these protections and the unique trust responsibilities that the United States owes to Indian children and Indian tribes. Amici have considerable expertise in this area of law and child welfare practice and seek to file a brief in support of Defendants to aid the Court in its disposition of this case.

The National Congress of American Indians (NCAI) is the largest national organization addressing American Indian interests, and represents more than 250 American Indian and Alaska Native tribes. As part of its efforts, NCAI works closely with state governments and private organizations to develop productive models of state-tribal cooperation, including cooperation relating to Indian child welfare.

The Association on American Indian Affairs (AAIA) is a 93-year-old Indian advocacy organization that began its active involvement in Indian child welfare issues in 1967. AAIA’s studies were a central focus of the Congressional hearings and committee

1 reports underlying ICWA's passage. At Congress's invitation, AAIA was closely
2 involved in the drafting of the Act. Since 1978, AAIA has continued to work with tribes
3 to implement ICWA.

4 The National Indian Child Welfare Association (NICWA) is a non-profit
5 membership organization founded in 1987 and dedicated to the well-being of American
6 Indian and Alaska Native children and families. NICWA is committed to protecting and
7 preserving ICWA while promoting ICWA compliance through trainings, technical
8 assistance, research, advocacy, and information sharing.

9 Amici agree with defendants that this matter should be dismissed for the reasons
10 stated in defendants' motions to dismiss. (Docs. 41, 44, and 47.) Amici write separately
11 to provide additional context into the importance of ICWA to Indian children, families,
12 and tribes. As explained in the attached brief, Congress enacted the Indian Child Welfare
13 Act in response to the widespread abuses committed by federal, state, and private agencies
14 against Indian children and families.

15 This Court should grant amici's motion pursuant to its "broad discretion to appoint
16 amici curiae." *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir.1982), *abrogated on other*
17 *grounds by Sandin v. Conner*, 515 U.S. 472 (1995). Given the importance of the issue
18 before this Court and the special expertise of amici, this amici curiae brief would assist the
19 Court in its review of these complex issues. *See Ctr. for Biological Diversity v. U.S.*
20 *Bureau of Land Mgmt.*, No. 09-CV-8011-PCT-PGR, 2010 WL 1452863, at *2 (D. Ariz.
21 Apr. 12, 2010) (granting amicus curiae status where "it is possible that [amicus] will shed
22 light on matters that the parties themselves are not able to do and in a way that will aid the
23 Court in resolving the pending matters").

24 For the foregoing reasons, amici respectfully request that this Court grant leave to
25 file the brief of amici curiae lodged herewith.

1 Dated: October 23, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of October, 2015, that I electronically filed with the Clerk the foregoing using the Court's Electronic CM/ECF System and that service was thereby accomplished upon:

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